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Banksy, Shredding, and the Fantasy Life of Art

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In what some call the greatest art prank of the modern era, Banksy managed to half shred one of his *Girl With Balloon* compositions just as it was auctioned off for a bit over one-million pounds. When he framed the work, Banksy installed a shredder capable of being triggering remotely. As the gavel fell an alarm went off and the shredder did its job. When the event unfolded on Friday, October 5 at Sotheby's in London, the crowd looked on in initial shock and dismay, then some laughter, and a scattering of applause as Sotheby's staff members carried the work out of the main auction room. It indeed was quite a show.

So is there anything legal to say about this stunning prank? A little. Some have theorized that Sotheby's and/or the private collector who consigned the work must have known about the shredder. The work is a fairly simple composition on canvas. But an ornate, very heavy frame surrounded the piece. And some sort of slit must be present along the bottom of the construction to allow the shredded canvas to exit the shredding device. Shouldn't the standard inspection performed by Sotheby's when it agrees to take on a work have revealed the device? Second, the standard Sotheby's consignment contract provides that the auction house is liable for damage a work sustains while it is in their custody. In theory, therefore, there might be contract or tort actions. But none of this is likely to matter. The half-shredded work almost surely is worth more now than it was before the auction. There are no damages. The successful bidder is likely to take the work as is and perhaps fantasize about placing it back on the auction block in the not too distant future.

If, for some strange reason, the successful bidder wants to upset the sale, may s/he? Is the "work" to be taken at face value? Or is the "work" the one made by Banksy that included the planned shredding? Was the "work" in fact damaged while in the custody of Sotheby's? If the shredding inheres in the work, then nothing of note has changed. The buyer got exactly what s/he bargained for. And, given the price range involved here, doesn't a potential buyer have an obligation to exercise due diligence and thoroughly inspect the piece before bidding significant amounts of money? Wouldn't this bidder have been expected to discover the shredder if s/he carefully investigated the work?

In combination, these factors strongly suggest that Banksy comes off a winner. No one is likely to go after him for anything. And, of course, his renown just got a kick to the moon. In a turnabout is fair play world, he has become just as powerful a money machine as the gallery and auction world his prank so successfully shredded.

I'll close with two fantasies for you to ponder. Over the weekend after the Sotheby's "gala," I wondered if the shredder was set to run a certain distance, automatically stop, and relatch itself shut—leaving open the possibility of triggering it a second time to finish the shredding if and when the piece is again put up for auction. What if that happens? At that point wouldn't the expectations of carefully scrutiny of the piece rise so significantly that anyone buying the work when it shreds a second time is left holding the bag? Or, fantasy number two, what if the work can be shredded again but the latch mechanism is "disarmed" by the Sotheby's buyer of last Friday. Can that buyer be accused of mutilating the work in violation of 17 U.S.C. §106A? Ponder away.